

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MR. AND MRS. DE LAVERGNE

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY

Respondent.

PCHB No. 79-154

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 8.02(3) of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat Washington, chairman, and David Akana (presiding), at a hearing in Tacoma on February 1, 1980.

Appellant and his wife appeared personally; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

On June 27, 1979, at about 5:55 p.m. respondent's inspector received information about an outdoor fire at appellant's property located at 9512 Orting Highway in Puyallup. The fire, which had been ignited by appellant earlier that day, was extinguished by the Sumner Fire Department before the inspector arrived at the site. While burning, the fire contained blackberry bushes, upholstery material, oil cans, and aerosol cans. Appellant used the upholstery material to help start the fire; the other materials were previously deposited on the ground and were shoved into the fire by appellant.

For the foregoing occurrence, appellant was issued a Notice of Violation from which followed a \$250 civil penalty for the alleged violation of Section 8.02(3) of respondent's Regulation I.

II

Appellant did not possess a permit for the fire in question from either respondent or the Sumner Fire Department.

III

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I and amendments thereto, which are noticed.

Section 8.02(3) provides that it is unlawful for any person to cause or allow any outdoor fire containing, among other things, garbage, petroleum products, or any substance other than natural vegetation which normally emits dense smoke or noxious odors.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Section 3.29 provides for a civil penalty of up to \$250 per day
2 for each violation of Regulation I.

3 IV

4 Any Conclusion of Law which should be deemed a Finding of Fact is
5 hereby adopted as such.

6 From these Findings, the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 Appellant violated Section 8.02(3) of Regulation I on June 27,
10 1979. The fire caused by appellant not only contained natural
11 vegetation, but also contained materials prohibited by the
12 regulation. The assessment of the civil penalty was proper. However,
13 the amount of the penalty is high for an apparent first violation
14 under the circumstances of this case. The \$250 civil penalty should
15 be reduced to \$125, of which \$75 is suspended pending no further
16 violations of Regulation I.

17 II

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

20 From these Conclusions the Board enters the following

21 ORDER

22 The \$250 civil penalty is reduced to \$125. \$50 of the \$125 amount
23 is immediately payable; \$75 of the \$125 amount is suspended on
24 condition that appellant not violate any provision of Regulation I for
25 a period of six months from the date of this order.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 DATED this 19th day of February, 1980.

2 POLLUTION CONTROL HEARINGS BOARD

3
4 WAT WASHINGTON
5 WAT WASHINGTON, Chairman

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7 DAVID AKANA
8 DAVID AKANA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER